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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,525	12/26/2000	Qingwen Hu	91436-286	2154

22463 7590 02/22/2005

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EXAMINER

NGUYEN, QUYNH H

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/745,525	HU ET AL.	
	Examiner	Art Unit	
	Quynh H Nguyen	2642	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED _____ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-46.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

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Applicant's arguments with respect to claims 1-46 have been considered but are not persuasive.

Applicant argues that in Gavrilovich, "a functional circuit may be identified as defective under one of three conditions, none of which relate to utilization of a functional circuit exceeding a threshold". Examiner respectfully disagrees. Gavrilovich teaches (col. 3, lines 27-30) that if the number of unacknowledged attempts exceeds a threshold, individual trunk measurements are taken.

Applicant argues that in Gavrilovich, "a given attempt count is not absolutely "high", i.e., the given attempt count is not compared to a threshold, but, instead, the given attempt count is relatively "high"". This is irrelevant to the claimed invention.


Applicant argues that, "... the establishment of new connections on a fully-functioning trunk", "to adaptively ease the over utilization of the fully-functioning trunk". This is not in the claims.

Applicant argues that "the method of claim 1 is performed at a switch, which has local information about the utilization of a particular trunk"; while in Ash the adaptation of a network to various traffic patterns is performed at an integrated network controller 100 that receives network information from switches in the network 411. Examiner respectfully submits that claim 1 recites "a plurality of switches and a plurality of links connecting said switches"; Ash also teaches (Fig. 2) a plurality of switches (SW 10) and a plurality of links (11) connecting said switches. Therefore, Ash teaches the claimed invention.

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Applicant argues that in Ash, traffic intensity between the switches is measured as the number of idle trunks in the link and not utilization of a single trunk. Examiner already addressed this issue in the previous office action. Applicant further argues, "The number of trunks reserved in the given link is not related to traffic intensity but to the Actual Size of the Trunk Group". This is irrelevant to the claimed invention.

Apparently, most of Applicant's arguments are directed to features not recited in the claims.



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